

# I.

## INDEX TO BRIEF.

	Page
Argument .....	12
Assignment of Errors.....	3
Pleadings .....	1, 2, 3
Statement of Case.....	7

### I.

Under the Act of March 3, 1891, Stockley was entitled at the date of the contest to a patent as evidence of his complete ownership and at that date possessed and still possesses a title which could be assailed only in a judicial proceeding based upon allegation and proof sufficient to justify the cancellation of a patent .....	12
--	----

#### (a)

Lane v. Hoglund, 224 U. S., 174, and Payne v. Newton, 255 U. S., 438, are conclusive as to the appellant's rights .....	15
---	----

#### (b)

Error in the decision of the Circuit Court of Appeals in holding that the confirmative provisions of Act of March 3, 1891, are not set in motion until the issuance of final certificate.....	19
---	----

#### (c)

The running of the statute is not affected by the character of the land.....	23
--	----

## II.

### (d)

	Page
Error in decision of the Circuit Court of Appeals in holding that the confirmative effect of the statute was stayed by presidential withdrawal.....	26

### (e)

Error in the decision of the Circuit Court of Appeals in holding that the confirmative effect of the Act of March 3, 1891, was stayed by the effect of instructions of the Commissioner of the General Land Office .....	35
--	----

## II.

The decisions of the Secretary and of the Commissioner directing the cancellation of Stockley's entry were void for want of jurisdiction, the decision of the local officers not having been appealed from..	37
--	----

## III.

The decision of the Secretary and of the Commissioner are null for error of law.....	47
--	----

### (a)

Mineral land under the statute means land actually known at the time of final proof to be valuable for minerals .....	48
---	----

### (b)

The decision was rendered without any evidence whatsoever to sustain the finding that the land was mineral in character.....	56
--	----

### III.

#### LIST OF AUTHORITIES CITED IN BRIEF.

Page

##### STATUTES.

Section 3, Act of May 14, 1880 (21 Statutes at Large 40) .....	8
Section 7, Acts of March 3, 1891 (26 Statutes at Large, 1095), pages .....	
3, 4, 5, 6, 8, 10, 12, 13, 15, 19, 21, 23, 25, 26, 34, 35, 36	
Section 2302. Revised Statutes.....	48

##### RULINGS OF THE LAND DEPARTMENT.

Arthur v. Earle, 21 L. D., 92.....	49
Brown v. Jefferson, 1 L. D., 467.....	44
Central Pacific Ry. Co., 8 L. D., 30.....	44
Circular, Jan. 19, 1911, 39 L. D., 458.....	39, 41, 43
Cleghorn v. Bird, 4 L. D., 478.....	51
County Commissioners v. Alexander, 5 L. D., 126....	51, 52
Crowther Re, 43 L. D., 262.....	21
George W. Dally, 41 L. D., 295.....	46
Dovenspech v. Dell, 7 L. D., 20.....	45
Davis v. Fraser, 21 L. D. 294.....	45
Dughi v. Hawkins, 2 L. D., 721.....	51
Farris v. Mitchell, 11 L. D., 300.....	44
Freeman v. Central Pac. Ry. Co., 6 L. D., 249.....	45
Re Harris, 42 L. D., 611.....	15, 20
Re Harris, 28 L. D., 90.....	24
Herman v. Chase, 39 L. D., 590.....	25
Hazard v. Swain, 14 L. D., 231.....	45
Hobbs v. Goulette, 18 L. D., 409.....	45

# IV.

	Page
Instructions, 43 L. D., 322.....	21, 25
Re Jas. L. Jacobs et al., 7 L. D., 570.....	49
Re Judicak, 43 L. D., 246.....	21, 25
Lindgren v. Boo, 7 L. D., 98.....	45
McSherry v. Gildea, 5 L. D., 585.....	44
Morrison v. McKissick, 5 L. D., 245.....	45
Rea v. Stephenson, 15 L. D., 37.....	45, 49
Rules of Practice, 39 L. D., 459.....	41, 43
Rules of Practice, 39 L. D., 404.....	43
Swims v. Ward, 13 L. D., 686.....	45
Southern Pac. Ry. Co. v. Saunders, 6 L. D., 98.....	45

## TABLE OF CASES CITED.

Ard v. Brandon, 156 U. S., 537.....	39
Black v. Jackson, 177 U. S., 349.....	29
Bailey v. Saunders, 228 U. S., 605.....	57
Chrisman v. Miller, 197 U. S., 321.....	52
Cornelius v. Kessel, 128 U. S., 456.....	42
Cosmos Exploration Co. v. Gray Eagle Oil Co., 190 U. S., 309 .....	42
Colorado Coal & Coke Co. v. U. S., 123 U. S., 307....	50
Doran v. Kennedy, 237 U. S., 365.....	39
Deffeback v. Hawke, 115 U. S., 392.....	48
Davis v. Weibhold, 139 U. S., 507.....	49
Diamond Coal & Coke Co. v. U. S. 233 U. S., 236.....	52
Germain Iron Co. v. James, 89 Fed., 811; 32 C. C. A., 348 .....	43
Habana, The, 175 U. S., 685.....	44
Howe v. Parker, 190 Fed. 746; 111 C. C. A. 466.....	42

# V.

	Page
Interstate Commerce Com. v. L. & N. Ry. Co., 227 U. S., 81.....	57
James v. Germain Iron Co., 107 Fed. 597; 46 C. C. A., 476 .....	43
Kansas Pac. Ry. Co. v. Dunmeyer, 113 U. S., 169....	30
Lane v. Hoglund, 244 U. S., 174.....5, 15, 20, 22, 32, 36	
Lytle v. Arkansas, 9 Howard, 332.....	38
Love v. Flahive, 205 U. S., 199.....	43
Leonard v. Lennox, 104 C. C. A., 296; 181 Fed., 760..	17, 55
Mining Co. v. United States, 226 U. S., 550.....	32
Osborn v. Froyseth, 216 U. S., 571.....	39
Payne v. United States ex rel. Newton, 255 U. S., 438. ....	19, 22, 23
Payne v. New Mexico, 255 U. S., 368.....	18, 55
Railroad Co. v. United States, 234 U. S., 185.....	57
St. Paul M. & M. Ry. Co. v. Donohue, 210 U. S., 30...	8
Sturr v. Beck, 133 U. S., 541.....	29
United States v. Waddell, 112 U. S., 76.....	29
United States v. Buchanan, 232 U. S.....	32
United States v. Iron Silver Min. Co. et al., 128 U. S., 673 .....	50
Wilcox v. Jackson, 13 Peters, 513.....	37
Weeks v. Bridgeman, 159 U. S., 546.....	38
Wyoming v. United States, 255 U. S., 489.....	18, 54



# **SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1922.**

---

**No. \_\_\_\_\_**

---

**Appeal from the United States Circuit Court of Appeals  
for the Fifth Circuit.**

---

**THOMAS J. STOCKLEY, ROBERT L. STRINGFELLOW,  
J. G. HESTER, ET AL.,**

**Appellants,**

***versus***

**THE UNITED STATES OF AMERICA.**

---

**Original Brief for Appellants.**

---

This suit was brought by the Government to recover from the possession of defendants a tract of land in Caddo Parish, Louisiana, for the cancellation of certain instruments, for an injunction, accounting and receivership.

The allegations of the bill are, in substance:

That on and before December 15, 1908, the plaintiff was the owner of the property in controversy as part of the public domain, and that on December 15, 1908, in order to conserve the public interests, and in aid of such legislation

as might thereafter be enacted, the President withdrew from settlement and entry and all other forms of appropriation all of the public lands within the township in which the land in controversy lies, and that such order of withdrawal was confirmed by executive order of date July 2, 1910, under authority of act of June 25, 1910; that notwithstanding such order of withdrawal, and "without any valid title, lawful right or authority, the defendants in bad faith entered upon and took possession of such property and drilled thereon three wells from which they extracted quantities of oil and gas."

Defendants answered, claiming title to the property under a homestead entry by Thomas J. Stockley on November 13, 1905, and under contracts entered into by Stockley subsequent to his final proof and payment.

By special plea in bar (see paragraph VIII of the answer, Record, pp. 15 and 16) defendants set up that on January 5, 1909, Stockley made final proof under his homestead entry; that receiver's receipt upon the final entry of said land under the homestead laws issued to him on January 16, 1909,

"and defendants show that within two years from the date of issuance of said receiver's receipt upon final entry of said land under the homestead laws, no contest or protest against the validity of said entry was initiated against the said Thomas J. Stockley, and that at the expiration of two years from the issuance of said receiver's receipt the said Stockley was, under the laws of the United States, and particularly under the act of Congress

approved March 3, 1891, the absolute owner of said land, and was entitled to patent thereto, which the Department of the Interior was without right or power to deny to him. All of which defendants allege to be true and plead the same in bar to the bill."

Further pleading in the answer defendants set up that Stockley's title was good for the reason that he had made and perfected homestead entry, which was still legally existent; that proceedings had been had in the Interior Department purporting to cancel Stockley's homestead entry, but that such proceedings were void for reasons set out in paragraph IX of the answer, leaving the entry and Stockley's rights as owner intact.

On motion of the defendants, and pursuant to Equity Rule 29, the plea in bar was advanced for hearing before trial on the merits (Record, p. 20), and was overruled in a written opinion (Record, p. 39). Thereafter (Record, pp. 138, *et seq.*), the entire case was tried and decree rendered for complainant.

The decree was affirmed by the Circuit Court of Appeals (Record, p. 187), and this appeal followed; defendants assigning as error:

### **ASSIGNMENT OF ERRORS.**

#### **I.**

The Court erred in holding that the homestead entry of the land in controversy made by Thomas J. Stockley, and

under which he held and possessed such land, was affected by the withdrawal order of December 15, 1908.

## II.

The Court erred in holding that the confirmatory provisions of Section 7 of the act of March 3, 1891, are not controlling of this case.

## III.

The Court erred in overruling the plea in bar set up by defendants, under which they claim the benefit of the confirmatory provisions of Section 7 of the act of March 3, 1891, as rendering null and void proceedings in the Interior Department, had under a contest instituted after the expiration of more than two years from the date of the issuance to said Thomas J. Stockley of the receiver's receipt upon final entry of the tract of land here in controversy under the homestead laws, when there existed within such statutory period of two year no contest or protest against such entry.

## IV.

The Court erred in holding that the submission of final proof by a qualified homestead entryman, who had complied with the provisions of the law relative to residence, settlement and cultivation, and the payment by the said entryman of all fees and commissions due, and the filing of all necessary affidavits, followed by the issuance to the entryman of the receipt of the receiver of public moneys for all

such sums paid, was not a final entry under the terms of the said Section 7 of the act of Congress of March 3rd, 1891.

#### V.

The Court erred in holding that after the payment of all sums due by the entryman, the issuance by the receiver of public moneys of receipt therefor upon the filing by the entryman of final proof and all affidavits required by law, is not a "receiver's receipt upon final entry" under the terms of Section 7 of the act of Congress of March 3rd, 1891.

#### VI.

The Court erred in holding that this case is not governed by the case of *Lane v. Hoglund*, 244 U. S., 174.

#### VII.

The Court erred in holding that the issuance of the final certificate by the register is essential to the setting in operation of the confirmatory provisions of Section 7 of the act of March 3rd, 1891.

#### VIII.

The Court erred in holding that approval of Stockley's final proof was necessary to set in motion the period of limitation contained in the confirmatory provisions of Section 7 of the act of March 3rd, 1891.

#### IX.

The Court erred in holding that the effect of the order of the Land Department, December 15, 1908, was to suspend

the homestead entry of Thomas J. Stockley, and to cause the receipt issued by the receiver to be taken out of the effect of the statute contained in Section 7 of the act of March 3rd, 1891.

#### X.

The Court erred in holding that the property in controversy was mineral land at the date of Stockley's final proof and non-mineral affidavit, and at the issuance to him of the receiver's receipt.

#### XI.

The Court erred in holding that any effect could be given to the action of the Secretary of the Interior and of the Commissioner of the General Land Office in reversing the concurrent decision of the Register and Receiver of the local land office sustaining Stockley's entry as against the contest filed by the United States, when no appeal had been taken by the United States from such decision.

#### XII.

The Court erred in holding that there was any evidence whatever before the Commissioner of the General Land Office or the Secretary of the Interior that the land in controversy was known to contain minerals at the date of Stockley's final proof and non-mineral affidavit.

#### XIII.

The Court erred in holding that under the laws of the United States land is mineral in character as oil or gas lands

when at the date involved no oil or gas had been found thereon or on adjacent land.

#### XIV.

The Court erred in holding that a decision of the Secretary of the Interior purporting to cancel a homestead entry on the ground that the land is and was at the date of final proof valuable for its deposits of oil or gas can be given any legal force or effect when the record before the Secretary fails to disclose any evidence that any oil or gas had been found or was known to exist in said land at such date and when there existed no conflict whatever in the evidence that no prudent oil operator would at such date have expended any money to drill on such land.

#### XV.

That the Court erred in holding title to be in the United States as against the defendants.

#### STATEMENT.

A concise statement of the history of the case, in so far as it cannot be the subject of conflict between plaintiff and defendant, will facilitate argument.

On March 10, 1897, the defendant, Stockley, settled on the land in controversy, erected his residence thereon, proceeded to clear the land, and has since that date continuously resided on and cultivated the tract.

On November 13, 1905, he made formal entry under the homestead laws.

Under Section 3 of the act of May 14, 1880, the entryman had the right to take all or any portion of the time intervening between settlement and entry in making up the five years' residence and cultivation necessary to complete the claim under the homestead laws.

*St. Paul, M. & M. Ry. Co. v. Donohue*, 210  
U. S., 30.

Consequently, at any time after the date of the filing of his homestead entry, Stockley had the right to make final proof.

On December 15, 1908, subject to exceptions hereafter to be mentioned, the township was included in an executive order of withdrawal. At this date, it will be noted that Stockley had not only made his entry and paid the initial fees required therefor, but had complied fully with the laws relative to the residence and cultivation requisite to the securing of absolute title.

On January 5, 1909, the entryman made final proof of his entry, complying with all provisions of law and of departmental regulations, except the making of the "non-mineral" affidavit, which latter instrument he filed on January 16, 1909 (Record, p. 52; see also admission, p. 180), upon which filing and upon his payment of all fees and commissions required by law, a receipt from the Receiver of Public Moneys was issued to him (Record, p. 57) for all sums due on final entry.

More than a year thereafter, to-wit, on March 17, 1910, Stockley succeeded in interesting the Gulf Refining Company of Louisiana in taking a mineral lease of this property, under which lease oil wells were later drilled.

On January 26, 1910, on report of a special agent confirming the truth of all of the affidavits filed in support of Stockley's entry, the Commissioner of the General Land Office ordered the case "clear-listed and closed as to the Field Service Division." (Record, p. 63.)

Notwithstanding this report and the expiration of more than two years from the date of the receiver's receipt issued on final entry, the Commissioner, on February 27, 1912, directed a contest against Stockley's entry, based upon the withdrawal and the alleged mineral character of the land, which resulted in a decision of the Register and Receiver sustaining the entryman's title. (Record, p. 107). No appeal was taken from this decision by the United States, but notwithstanding the absence of an appeal, the Commissioner of the General Land Office proceeded to take up the matter as upon appeal and held the entry for cancellation (Record, p. 114), although concluding,

"there is no doubt but that he (Stockley) settled on the land in good faith for a home, in ignorance of possible values for oil and gas."

Appeal was taken by Stockley to the Secretary of the Interior, who affirmed the order of the Commissioner, but on account of Stockley's good faith, modified that decision

so as to authorize the issuance of a patent with reservation of the minerals to the Government, under the act of July 17, 1914.

As appears from the Secretary's opinion (Record, p. 120), it was urged before him that under the provisions of the act of Congress of March 3, 1891 (26 Stat. at Large, 1095), the Interior Department was without jurisdiction to entertain the contest in question; which contention, however, the Secretary overruled. These decisions of the Commissioner and the Secretary, respectively, were based, as appears from the record, upon their findings that the lands in question had been withdrawn by executive order of December 15, 1908, and that the land is and was at the date of final proof valuable for deposits of oil and gas.

This decision of the Secretary of the Interior, motion for rehearing of which was denied on August 26, 1915 (Record, p. 118), has been treated since by Stockley and those holding under him as null (see Record, p. 123), as indeed is any decision rendered by an executive officer in a case beyond his jurisdiction, or in violation of established rules of law.

This suit was instituted by the Government on August 2, 1917, two years after the decision of the Secretary of the Interior. The bill, however, nowhere refers to Stockley's homestead entry, nor would a most careful reading of the Government's pleadings reveal the fact that such entry

had ever been made or that the proceedings above referred to had ever taken place.

Entirely ignoring these proceedings, and treating the defendants as naked trespassers on the public domain, the bill, of course, contains no prayer for the annulment of Stockley's claim as an entryman under the homestead laws. The Government's suit, therefore, must stand or fall upon the theory upon which it was instituted; namely, that Stockley had at the date of the filing of the bill no rights of any character in the land, toward which he occupied merely the position of an unlawful trespasser. If, therefore, the record discloses such state of facts as to show that Stockley possessed on the date of the filing of the suit a legal or equitable title of any kind, the bill, of course, should have been dismissed. If, under the record, the proceedings resulting in the decision of the Secretary above referred to, were not such as wholly to have wiped out Stockley's claim, the Government's suit must fail; and its success must, perforce, rest upon demonstration that the effect of the Secretary's decision in itself was to leave Stockley without any further rights in the premises.

For, if the Interior Department was not the forum vested by law with power and jurisdiction to annul Stockley's entry, or if the proceedings before the Department were in themselves null to the extent of rendering the action of the Secretary void, the plaintiff could take nothing in this suit, for this case rests entirely, as pointed out, upon the conclusive effect of the decision of the Secretary as wiping out Stockley's rights under his final entry.

## ARGUMENT.

### I.

Under the act of March 3, 1891, Stockley was entitled at the date of the contest to a patent as evidence of his complete ownership; and at that date possessed and still possesses a title which could be assailed only in judicial proceedings based upon charges sufficient to justify the cancellation of patent.

As before pointed out, this suit is not instituted to obtain a judicial cancellation of the title issuing to Stockley under his homestead entry. No charge whatever is presented in the bill against its validity, against the method in which it was perfected or against the verity of any of the proof necessary for its perfection. The bill meticulously avoids reference to homestead or other entry and as carefully as could be done refrains from disclosure that Stockley had ever attempted to initiate any claim under the public land laws. The bill treats the defendants as unlawful trespassers and, as shown by evidence and briefs, proceeds entirely on the theory that it was the decision of the Interior Department alone which caused Stockley to be without right in the premises. That is, the Government's suit is based upon the Secretary's order of cancellation, and not upon a judicial attack on Stockley's entry; and, necessarily, its case must stand or fall upon the effect of the Department's decision. If that order was a legal one, rendered within the power and jurisdiction of the Secretary, and

neither an arbitrary act nor based on error of law, the Government is entitled to a decree.

If, however, the Secretary had no jurisdiction in the premises, if his decision was rendered in contravention of established rules of law, if it were an arbitrary act or made without any evidence to sustain his findings, then it would be to discuss elementary propositions to argue that it is utterly void and of no effect in this suit. If such order be null, not effective as a cancellation, then the decree appealed from is wrong, and should be reversed.

But Section 7 of the act of March 3, 1891 (26 Stat. at L., 1095), provides:

**"After the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead \* \* \* laws, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him."**

As shown by the record, Stockley made his final proof on January 5, 1909, filed his "non-mineral affidavit," as required by law, on January 16, 1909, and on that date paid to the receiver of the local land office all fees and commissions required for consummation of the entry. Upon this final proof and final payment the receiver issued him his receipt (Record, p. 57) for the sums so paid. The making

of these proofs and the payment of all sums required by law was all that it was within the power of the entryman to do; the receiver's receipt issued thereunder was the final receipt to be issued under that entry.

The case thereafter underwent the usual investigation, with the result that after the expiration of over a year, it was found through departmental and field investigation that the entry was entirely regular, and the case ordered "clear-listed and closed as to the Field Service Division." (Record, p. 63.)

No further proceedings were had in the Department until **February 27, 1912, more than three years after the issuance of the receiver's receipt on final entry**, when the contest was directed (Record, p. 61), which terminated in the decision of the Secretary of the Interior upon which alone the Government relies as against the rights here asserted by Stockley under his homestead entry.

The statute above referred to was pleaded in the departmental proceedings as a denial of any right, power or jurisdiction to entertain such contest, but the Secretary overruled this contention (Record, p. 120), and proceeded, notwithstanding the statute, to entertain jurisdiction and to **cancel the entry, though receiver's receipt had issued on final entry more than two years before the initiation of the contest.**

It is the contention of appellants that this decision was utterly null; that the final entry remains unaffected thereby, and that Stockley has a complete equitable title under the statute which declares that he is "entitled to a patent

conveying the land by him entered, and the same shall be issued to him."

(a)

In *Lane v. Hoglund*, 244 U. S., 174, the Court, referring to the above-mentioned act of March 3, 1891, said:

"In the exercise of its discretion Congress has said that for two years after the entryman submits final proof and obtains the receiver's receipt the entry may be held open for the initiation of proceedings to test its validity, but that if none shall be begun within that time, it shall be passed to patent as a matter of course. Thus in a case like this where, according to conceded facts, no proceedings were begun within the prescribed period, there is no room for the exercise of discretion or judgment, but on the contrary, a plain duty to see that the entryman receives a patent."

Again (p. 177):

**"The statutes make it very plain that if, at the expiration of two years from the date of the receiver's final receipt there is no 'pending contest or protest' against the entry, its validity no longer may be called in question; \* \* \*** The purpose to fix his right and to command its recognition is obvious."

The reason for the passage of the act is clearly stated in *re Harris*, 42 L. D., 611, quoted at length in the *Hoglund* case:

"The records of this department disclose that, during several years preceding 1891, a very large

number of entries were suspended by the General Land Office on vague and indefinite suggestions of fraud or non-compliance with law, to await investigation by special agents of that bureau. These suspensions were so numerous and the force available for investigation was so insufficient as to create a practical blockade in the issuance of patents, to the serious prejudice of *bona fide* claimants under the public land laws \* \* \* The reports of this Department to the public land committees of the Senate and House of Representatives, concerning this legislation, and the debates of those bodies thereon leave no doubt of the purpose of Congress that said proviso should correct the hardship of this situation and provide against a repetition thereof."

Further in the opinion the Secretary refers to the act as having been "passed, primarily to rectify a past, and to prevent future abuses of the departmental power to suspend entries."

Commenting on the purpose of the act the Court proceeds:

"We think it certainly and unmistakably lays upon the Secretary of the Interior, as the head of the Land Department, a plain duty to cause a patent to be issued to a homestead entryman whenever it appears that two years have elapsed since the issue of the receiver's receipt upon the final entry, and that during that period no proceeding has been initiated or order made which calls in question the validity of the entry. In the exercise of its discretion **Congress has said that for two years after the entryman sub-**

mits final proof and obtains the receiver's receipt the entry may be held open for the initiation of proceedings to test its validity, but that if none shall be begun within that time, it shall be passed to patent as a matter of course. Thus in a case like this, where, according to the conceded facts, no proceeding was begun within the prescribed period, there is no room for the exercise of discretion or judgment, but, on the contrary, a plain duty to see that the entryman receives a patent."

No language could be plainer, and the undisputed facts in the case at bar lead to but one conclusion.

On January 16, 1909, after Stockley had made his final proof, and had paid all the law required of him for the completion of his title, the receipt was issued to him by the receiver (Record, p. 57). That this was "a receipt on final entry" can admit of no doubt.

Stockley had done and performed every act which he was called upon to perform to acquire a perfect title under the law and had paid everything which the law exacted of him to obtain such title. More, he could not do. He had then reached "that point of time when an applicant has done everything he is required to do in the premises."

*181 Fed., 760, Leonard v. Lennox.*

He had exhausted every condition and every charge imposed on him by law to the obtention of patent; the remainder of the proceedings was then left to the officials

of the Land Department. Over them Stockley had no control.

He had made preliminary entry, settlement, residence and cultivation, final proof and payment. He had finally discharged every burden incumbent upon him and he had a receipt from the receiver for all sums due on final entry.

At such stage in the process of acquiring title, the entryman becomes the equitable owner.

"A claimant to public land who has done all that is required under the law to perfect his claim, acquires rights against the Government, and his right to a legal title is to be determined as of that time \* \* \* upon the theory that by virtue of his compliance with the requirements, he has an equitable title to the land, that in equity it is his, and that the Government holds it in trust for him."

*255 U. S., 368, Payne v. New Mexico, and cases cited.*

See also *255 U. S., 489, Wyoming v. United States:*

"When a party has complied with all the terms and conditions necessary to the securing of title to a particular tract of land, he acquires a vested interest therein; is regarded as the equitable owner thereof, and thereafter the Government holds the legal title in trust for him."

No regulation of the Land Office, no rule of the Department could have imposed upon Stockley additional obligations or have taken away from him the rights granted by Congress.

"The words of the statute are direct and make it very plain that if, at the expiration of two years from the date of the receiver's receipt on final entry, there is no 'pending contest or protest' against the entry, its validity no longer may be called in question in the Land Department—that is to say, 'the entryman shall be entitled to a patent—and the same shall be issued to him.' The purpose to fix his right and to command its recognition is obvious. \* \* \* That purpose is to require that the right to a patent which, for two years, has been evidenced by a receiver's receipt, and at the end of that period stands unchallenged, shall be recognized and given effect by the issue of the patent without further waiting or delay \* \* \*. Of course, the purpose is not merely to enable the officers to issue the patent \* \* \* but to command them to issue it in the event stated—the words of the statute being, 'The entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him.'"

255 U. S., 438 (442), *Payne v. U. S. ex rel., Newton*.

(b)

But the Circuit Court of Appeals denied controlling effect to the act of March 3, 1891, on the ground (Record, p. 190) that the confirmatory provisions of the statute are not set in motion until the issuance of the final certificate by the Register of the local Land Office. In so holding the Court erred.

The reasoning of the Court was that until approval of the proofs and issuance of certificate as evidence thereof, there

is no "final entry"; and that, notwithstanding compliance by the entryman with every legal prerequisite, the receipt by the receiver for all sums due on final entry is not a "receiver's receipt on final entry" until the certificate is issued by the Register.

Such holding not only ignores the plain language of the statute, but its reasoning runs squarely counter to the very purpose of the act and to the reason and cause for its enactment.

For the effect of such decision is to make the running of the statute entirely dependent upon the will of land office officials who might indefinitely suspend issuance of certificate, and so defeat the object of the law (244 U. S., 181):

"for two years after the entryman **submits final proof and obtains the receiver's receipt**, the entry may be held open for the initiation of proceedings to test its validity; but that if none such be begun within that time it shall be passed to patent as a matter of course."

Such a situation as would result if the decision of the Circuit Court of Appeals were sustained was the very condition which the act in question was passed to prevent.

(See *Lane v. Hoglund*, *supra*, page 180.)

Following the decision in the *Harris* case, 42 L. D., 611, in which as fully discussed by this Court in the *Hoglund* case, the Secretary overruled previous holdings of his de-

partment that the statute had "no reference to proceedings by the United States, or its officers or agents" and did "not affect the conduct or action of the Land Department in taking up and disposing of final proof of entrymen after the lapse of two years mentioned in the act," instructions were issued (43 L. D., 332) as follows:

"Time, under the statute of limitation created by the proviso to Section 7 of the act of March 3, 1891, runs from the date of the issuance of the receiver's receipt upon final entry. There is no doubt that Congress chose the date of the receiver's receipt rather than of the certificate of the register as controlling, for the reason that payment by the claimant marks the end of compliance by him with the requirements of law. **It would be manifestly unjust to make the right to a patent dependent upon the administrative action of the register, subjecting it to such delays as are incident to the conduct of public business and over which the claimant has no control. Payment, of which the receiver's receipt is but evidence, is therefore, the material circumstance that starts the running of the statute, inasmuch as a claimant is and always has been entitled to a receipt when payment is made.**"

See also *re Judicak*, 43 L. D., 246; *re Crowther*, 43 L. D., 262.

Rulings of the Interior Department holding otherwise, some of which are among the cases cited in the opinion of the Circuit Court of Appeals, are without authority in the face of the statute and of this Court's statement of the reason, purpose and object of the law.

The act was intended as a statute of repose, making the expiration of two years from the final payment, which in turn marked the final act capable of performance by the entryman in the process of perfecting title, conclusive evidence of his right to patent. Within the two years from that date, the Department might investigate his claim, approve it or reject it, or order a contest; **but unless such claim be rejected, protested or contested within two years from the date of receipt for the sums due on final entry, the entryman is vested with absolute right to patent as owner.**

Any other meaning is distinctly repudiated by the decisions in *Lane v. Hoglund* and *Payne v. U. S. ex rel. Newton*.

All proceedings in the acquisition of title to the public lands of the United States are statutory and all acts passed by Congress under the exercise of its constitutional power are supreme. When Congress has said in plain language that the Department has only two years from the time receipt is issued to the entryman and his final performance of the acts necessary to obtain title, in which to examine the proofs and to approve or reject them, and that the failure of the Department to take action within that time shall vest a perfect title in the entryman, no executive officer of the United States can in any manner impair such entryman's title or interfere, directly or indirectly, with the operation of the controlling statute.

It is respectfully submitted that Stockley's title was good from and after January 16, 1911, and that any proceedings on the part of the Land Office thereafter taken toward the assailing of the title, were absolutely beyond the power of the Department; and any action therein had, wholly null and void.

(c)

**The running of the statute is not affected by the character of the land.**

Because the land was leased for oil development more than a year after final proof and because oil was produced thereunder and because the Secretary had held that the land was at the date of final proof valuable for its deposits of oil and gas, the Court below held that the confirmatory provision of the act of March 3, 1891, did not apply.

Later in this brief, we discuss the Secretary's decision and its conflict with the settled rule of law that by the term "mineral lands" is meant "**lands known at the time to be mineral**". But even though the land had been in the legal sense "mineral land" at the date of final proof, yet the bar of the statute nevertheless applies.

That statute contains no exceptions: not even fraud stays its effect.

*Payne v. United States ex rel. Newton, supra.*

In the exercise of its legislative power, Congress has said that for no cause can an entryman's title be assailed or af-

fectured in the Interior Department unless steps are therein taken within two years from date of the receiver's receipt on final entry.

If on account of fraud or perjury, or for any other illegality, or if on account of the mineral character of the land, the entry be subject to attack, such attack must, after the expiration of the two years, be made in the Courts through the means of regular judicial proceedings.

Of course, mineral lands are not subject to entry under the homestead laws, but that circumstance is irrelevant. An entryman is not entitled to perfect his entry, except after actual compliance with the statutory provisions relative to settlement, residence and cultivation. Yet it is settled that the bar of the act of 1891 applies, though there have been utter failure to comply and though proof have been made fraudulently or by perjury. The cause or reason for the illegality of the entry is immaterial. The statute is universal in its application and the Government is relegated to an action in the Courts to test the validity of any entry where two years has elapsed from issue of the receiver's final receipt without contest or protest in the Department.

This has been on several occasions held by the Department.

In *re Harris*, 28 L. D., 90, it was held that homestead entries of coal lands fall "within the confirmatory provisions of the proviso to the seventh section of the act of March

3, 1891, notwithstanding this element of irregularity or invalidity in said entries."

In *re Judicak*, 43 L. D., 246, the Commissioner had held land embraced in the homestead entry coal in character and required the entryman to elect to receive a limited patent with reservation of the minerals to the Government under penalty of suffering the cancellation of his entry. On appeal to the Secretary, this decision was reversed because no contest or protest had been initiated until the expiration of more than two years from the date of receiver's receipt on final entry.

"The bar of the statute of March 3, 1891, had then fallen and the Commissioner was without jurisdiction to order such action."

Accordingly, it was ordered that an unrestricted patent issue, and the earlier case of *Herman v. Chase*, 39 L. D., 590, in which it had been held that the statute did not apply to homestead entries of known mineral lands, was declared to be overruled.

See also instructions (43 L. D., 323).

These departmental decisions properly construe the act and no other construction is permissible consistently with the rulings of this Court in the *Hoglund* and *Newton* cases. For the statute makes no exceptions on the ground of character of the land or otherwise; it creates a full, complete and general confirmation, insofar as the power of the De-

partment is concerned, of all entries under the homestead laws through the lapse of two years from receiver's receipt on final entry where no adverse proceedings had been set in motion through contest or protest. The statute neither makes nor permits of exceptions.

(d)

**The Circuit Court of Appeals erred in holding that the confirmative effect of the act of March 3, 1891, was stayed by the Presidential withdrawal of December 15, 1908.**

For the same reason that the proviso of the act of March 3, 1891, is operative as against the contentions above noticed, its effect could not have been stayed for the other causes assigned by the Circuit Court of Appeals. That reason is that the statute is a clear and plain direction by Congress that for no cause may patent be withheld or entry affected by the Department unless adverse proceedings taken contradictorily with the entryman be initiated within the two years.

Plainly, though an executive withdrawal might be ground for refusing to permit a homesteader to make final entry or be ground for contest thereafter, yet the lapse of two years from receiver's receipt actually issued on final entry completes the statutory bar. An entry illegal because made in violation of executive order, is clearly no more illegal than one made in violation of Congressional enactment or

perfected through fraud or perjury; and yet neither for illegality nor for deliberate fraud can the jurisdiction of the Department to cancel be maintained unless set in motion by contradictory proceedings begun within the two-year term. Such is now settled jurisprudence; and for stronger reasons must the statute be given its confirmatory effect as against defects arising not out of violation of statutes or through fraud or false swearing, but from breach of departmental regulations and orders.

Consequently, if on December 15, 1908 (before which date Stockley by his entry, residence and cultivation was qualified to make final proof), the President had actually withdrawn this land, final entry thereafter made by Stockley in violation of such order would have been confirmed by the statute if two years had been permitted by the Department to lapse without contest or protest.

But the land was not so withdrawn.

The withdrawal order (Record, p. 48) issued by the Commissioner with the approval of the Secretary, was as follows:

"To conserve the public interests and, in aid of such legislation as may hereafter be proposed or recommended, the public lands in Townships 15 to 23 North, Ranges 10 to 16 West, Louisiana Meridian, Natchitoches Land Office, are, **subject to existing valid claims**, withdrawn from settlement and entry, or other form of appropriation."

At the time of the withdrawal Stockley had made a formal legal entry of the land at the Land Office and had paid such fees and commissions as were then required. Moreover, he had lived upon the land and had cultivated it for more than the necessary five years; so that at the date of such withdrawal he had performed every act essential to the acquisition of title, except the making of final proof and the payment of the fees due on such final proof.

It is unnecessary to discuss the question as to whether the President could validly have affected Stockley's entry by a withdrawal, since the withdrawal itself specially excepted land held under existing claims. However, in this connection it is of interest to note that it has long since been held that a withdrawal of the land as against the homestead entryman standing in the position which Stockley then occupied, is beyond the power or authority of the executive.

In the opinion of Attorney General McVeagh (17 Opinions Attorney General 160) it was held:

"Where a homestead entry of public land has been made by a settler, the land so entered cannot, while such entry stands, be set apart by the President for a military reservation, even prior to the completion of full title in the settler; \* \* \* upon the entry the right in favor of the settler would seem to attach to the land, which is liable to be defeated only by failure on his part to comply with the requirements of the Homestead Law in regard to settlement and cultivation. This right amounts to an equitable in-

terest in the land, subject to the future performance by the settler of certain conditions (in the event of which he becomes invested with full and complete ownership); and until forfeited by failure to perform the conditions, it must prevail not only against individuals, but against the Government."

This ruling was quoted and approved in *Sturr v. Beck*, 133 U. S., 541.

This principle was borne in mind in the issuance of the withdrawal in question, which in explicit terms withdraws the public lands within certain townships from settlement and entry or other form of appropriation, **subject to existing valid claims.** No language could be clearer. The withdrawal saved and excepted all claims validly initiated and existing at the date of the withdrawal. And this word "claim" must have been advisedly used to cover in the broadest possible manner every possible assertion of right or interest in Government land.

That the homestead entryman by his entry and payment acquires a right, is the result of the authorities already cited and of such cases as:

*United States v. Waddell*, 112 U. S., 76, wherein the Court calls the homestead entry "an existing contract for the purchase of such land;" of

*Black v. Jackson*, 177 U. S., 349, where the Court refers to the homestead entry as "an inchoate title to the land;" and of

*Kansas Pacific Ry. Co. v. Dunmeyer*, 113 U. S., 169, in which the Court said that by the homestead entry "the inchoate right to the land was initiated" and "the right of homestead fastened to the land, which could ripen to a perfect title by future residence and cultivation."

Indeed the terms of the homestead statute, Section 2297, relative to failure to comply with the provisions of the act, do not stipulate that such failure **prevents** the entryman from acquiring title, but that such failure causes the land to **revert** to the Government.

In the *Dunmeyer* case, there had been granted to the Union Pacific Railway every alternate section of public land on each side of the railroad, "to which a pre-emption or homestead **claim** may not have attached." On July 25, 1866, the homestead entry was made. The line of definite location of the road was filed September 21, 1866. The homestead entry prevailed as against the railroad grant.

In *Black v. Jackson*, the Court said with reference to the right of the homestead entryman:

"It ought not to be assumed that he would put himself in such a position that he could not demand a patent. Although the inchoate legal title remains in the United States in trust for the person who may earn it, we think that in determining the value of the matter in dispute, we should look at the value of the land; not simply at the value of the right of present possession."

In the *Waddell case*, passing upon the constitutionality of Article 5508 of the Revised Statutes, under which the defendants were accused of conspiracy to deprive or hinder a citizen in the exercise of his right to establish claim to certain public lands under the homestead act, the Court said:

"By the original entry he acquires the inchoate but well defined right to the land after his possession, which can only be perfected by continued residence, possession and cultivation for five years \* \* \* It would indeed be strange if the United States \* \* \* cannot make a law which protects a party in the performance of his existing contract for the purchase of such land, without which the contract falls and the rights both of the United States and of the purchaser are defeated."

We cite these cases, not because it is necessary to discuss the question whether an executive withdrawal could validly have affected Stockley's homestead entry, but to show that the **claim** which attaches to the land by reason of the entry creates rights which the executive unquestionably intended to protect. The word "claim" is broad enough to cover any form of right or asserted right to land; but the entryman under the homestead laws possesses a real and substantial right, the force and effect of which was undoubtedly recognized by the Department in the framing of the withdrawal order in question.

The preliminary homestead entry even of **known** mineral lands, though subject to cancellation by the United States, so far segregates the land from the public domain and

makes it so far private property as to withdraw it from operation of the law permitting citizens to locate thereon.

*Mining Company v. United States*, 226 U. S., 550.

That Stockley's entry was a **claim**, that it was **validly made** and then existing, cannot be disputed. Indeed the Secretary's decision adjudging Stockley entitled to a "limited" (*i. e.* surface) patent is admission of the existing validity of his "claim." The Stockley entry, therefore, was an "**existing valid claim**," saved and reserved in itself from the operation of the withdrawal order.

Any contrary contention would appear to be in clear conflict with the decision of this Court in *United States v. Buchanan*, 232 U. S. 76, to the effect that **land embraced within a homestead entry is not "public land,"** since such entry "withdrew the land from entry and settlement by any other and segregated it from the public domain."

It is obvious that the particular tract of land on which Stockley was then living and which was the land entered by him was never withdrawn so as to prevent his completion and perfection of title. But if it had been so withdrawn, that fact would be immaterial in discussion of the operation of the statute.

In *Lane v. Hoglund*, 244 U. S. 174, the property covered by Hoglund's homestead entry was included within a na-

tional forest reserve by proclamation of the President issued before the expiration of the legal term of residence and which proclamation withdrew from entry all lands within the limits of such reserve, with the following exception:

"Excepting from the force and effect of this proclamation, all lands which may have been prior to the date hereof, embraced in any legal entry or covered by any lawful filing duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired; provided, that this exception shall not continue to apply to any particular tract of land unless the entryman, settler or claimant continues to comply with the law under which the entry, filing or settlement was made."

In directing the cancellation of Hoglund's entry, the Secretary had found as a fact (43 L. D., 543):

"It is clear from the evidence that Mr. Hoglund was not complying with the provisions of the homestead law at and prior to May 6, 1905 (the date of withdrawal) and that he therefore could not continue to comply with such law. His compliance with the letter of the homestead statute began a year later, May 6, 1906, and, as stated, continued until August, 1907. It was taken then too late, however, to cure the default existing at the date of the withdrawal of the land for a public use, and under the law and terms of the proclamation, the reservation had attached."

Thus the entryman had lost, under the very terms of the proclamation, his right to proceed to perfect his entry and the effort to restore such right did not come until after the date of effective withdrawal. In fact, however, he did make final entry and received the receiver's receipt thereon, although under the terms of the withdrawal he had no legal right thereto.

For this reason, the Secretary denied effect to the act of March 3, 1891:

"Said statute is not operative in this case because the withdrawal for public use as a national forest attached to the land May 6, 1905, at a time when the entryman was not complying with the law, prior to the issuance of the receiver's receipt and certificate, upon the final proof offered August 1, 1907."

This Court, however, held that nothing was material except the **fact** of issuance of receiver's receipt, and lack of protest or contest within two years, since the **right** to make final entry could not be contested thereafter in the Department if such entry **in fact** had been made:

**"No importance attaches to the creation of the forest reserve after the primary and before the final entry. The entryman was free, under the terms of the President's proclamation, to proceed with the steps essential to obtain a final entry and ultimately the full title, and to such a final entry the statute, the provisions in paragraph 7, has the same application as if the land were without instead of within the reserve."**

On reason and authority, therefore, no importance can attach to the withdrawal order as affecting the issues of this case.

(e)

The Circuit Court of Appeals erred in holding that confirmation under the act of March 3, 1891, was stayed by the effect of instructions of the Commissioner of date December 15, 1908.

The same reasons and the same authorities impel the conclusion that nothing in any orders or instructions from the Commissioner to the local land officials could have prevented the confirmatory effect of the statute.

The Circuit Court of Appeals, however, gave such effect to a letter from the Commissioner (Record, p. 51) in which *inter alia* he advised the Register and Receiver at Natchitoches:

"\* \* \* Proofs based upon selections, settlements or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in such cases receive the purchase money or issue final certificates of entry, but must suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of land and compliance with the law in other respects."

However, Stockley **did** submit final proof and **did** pay all sums payable on final entry and **did** obtain a receipt from the Receiver therefor.

It is clear that such receipt did set the statute in motion, regardless of any instructions from the Commissioner forbidding the acceptance of the money. It is here again the **fact** of payment and receipt which is controlling.

Besides, it will be noted that the local officials were directed not to act in the perfection of the entry, not because of the withdrawal (for the withdrawal order itself excepted all existing valid claims) but in order that entries and proofs might be "suspended, pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects."

But it was precisely to put an end to just such practice of indefinite suspension that the proviso in the act of March 3, 1891, was enacted into law. This Court, in the *Hoglund* case (244 U. S., 180), has reviewed the history of the statute and the reason for its enactment and no doubt can exist that it was the effect of wholesale suspensions on vague and indefinite suggestions of invalidity which was the evil moving Congress to pass the law.

Issuance of receipt by the Receiver, therefore, necessarily started confirmation under the act whether such receipt issued in disregard of these instructions or not, for no rule or order of the Commissioner can avail as against the mandate of the law.

It may again be pointed out that the Commissioner does not purport to modify the effect of the exception in the

withdrawal order which saves "all existing valid claims," but directs suspension merely to permit investigation of the "validity of the claims."

But the law permits that character of investigation by the Department only when set in motion by contest or protest directed against the entryman within two years from receipt on final entry. Such receipt here issued, and after two years, departmental power wholly ceased.

No time need therefore be spent in discussion of the power of the Commissioner in the premises. The withdrawal order was the act of the Secretary of the Interior (Record, p. 49), considered in law as the act of the President himself (13 Peters, 513, *Wilcox v. Jackson*) and excepted all "existing valid claims." It is legally impossible to give to the act of his subordinate, the Commissioner of the General Land Office, the effect of nullifying the exception made by the superior officer.

In any case, the entryman was entitled as a matter of right to make final proof and payment and to obtain the receipt of the receiver on such final entry. But, regardless of rules or instructions, the statute has confirmed the title when the receipt actually issued and two years elapsed without contest.

## II.

**The orders of the Secretary of the Interior and of the Commissioner of the General Land Office, directing the**

cancellation of Stockley's entry, were illegal, null and void, the decisions of the local Register and Receiver sustaining Stockley's entry not having been appealed from.

On March 10, 1897, Stockley had established a residence upon the property in dispute, built a house, cultivated the land, and established a home for himself, his wife and child. On November 13, 1905, he made formal entry at the district land office and, on January 5, 1909, made his final proof, receiving the receipt from the Receiver on such final entry on January 16, 1909.

As to his good faith and compliance with the law, there can be no doubt. We quote from the Commissioner's finding of fact:

"There is nothing in the record to impugn the claimant's residence and cultivation under the homestead law, and there is no doubt that he settled on the land in good faith, for a home, in ignorance of possible value for oil and gas." (Record, p. 114.)

By his settlement, entry, cultivation, final proofs and payment, the entryman had done all that the law required of him, or that he could do, and his equitable title was complete from the date of his final proofs, unless there existed at that time some lawful reason for refusing to issue his evidence of title.

*9 Howard, 332, Lytle v. Arkansas.*

*128 U. S., 456, Cornelius v. Kessel.*

*159 U. S., 546, Weeks v. Bridgeman.*

*156 U. S., 537, Ard v. Brandon.*

*216 U. S., 571, Osborn v. Froyseth.*

*237 U. S., 365, Doran v. Kennedy.*

Nothing further transpired until February 27, 1912, when contest proceedings under the circular of January 19, 1911 (39 L. D., 458), were directed by letter "P." (Record, p. 61.) The charges upon which the contest was based were that the land was mineral in character and that the entryman knew at the time of final proof, or should have known, as a reasonably prudent man, that the land contained and was chiefly valuable for oil and gas.

The entryman answered; the salient averments of the answer being that his final proof was made in good faith and in ignorance of any possible mineral values; that there was nothing at that time on the land or from its location to indicate to him or to any other prudent man that the land contained deposits of oil or gas, and that the land had at that date no value to him other than as a farm and a home.

A hearing having been ordered on these charges, testimony was taken at Shreveport, the Government being there represented by a special agent and by the chief of the Field Division. The record being submitted to the Register and Receiver, the local officers concurred in a joint decision on March 1, 1913, in favor of the entryman. (Record, p. 107.) The decision was based upon the finding of fact that Stockley's entry was made and perfected in good faith and that at the date of final proof no oil or gas had been

discovered within five miles of his homestead; the nearest attempt at a well being a dry hole.

The result of the contest was that the contention of fact that the entryman knew, or should have known, that the land contained oil or gas at the date of final proof, was decided adversely to the Government. **No appeal was taken from this decision.**

By *ex parte* decision "N" of date December 22, 1913, the Commissioner (Record, p. 114) stating that Stockley's contention is "the sole question is: Was the land known to contain oil or gas prior to January 5, 1909?"—gave a negative answer to that question but proceeded to reverse the decision of the local officers upon the finding by him that the evidence showed that circumstances existed sufficient to put the entryman on notice at that date that his land contained such minerals. This decision was affirmed by the Secretary of the Interior (Record, p. 122), who though holding the lands to have been at date of final proof valuable for oil, likewise fails to find that they had that **known** character at such date.

That is, in the absence of any appeal, the Commissioner reversed the joint decision of the Register and Receiver and ordered the cancellation of the homestead entry which had been sustained by the decision of the local land office.

Appellants contend that such orders of the Commissioner and of the Secretary are absolutely null.

The circular of January 19, 1911, under authority of which alone said contest was had, provides:

"14. The above proceedings will be governed by the rules of practice." 39 L. D., 459.

Rule 51 of the rules of practice provides:

"When any party fails to move for a new trial, or to appeal from the decision of the Register and Receiver within the time specified, such decision shall, as to such party, be final and will not be disturbed except in case of—

(a) Fraud or gross irregularity.

(b) Disagreement in the decision between the Register and Receiver."

*39 L. D., 404.*

It is not pretended in the instant case that there exists any fraud or gross irregularity, and the decision of the local office was the joint decision of the Register and Receiver.

In holding the surrounding circumstances were such as to put Stockley on notice that his land was oil bearing, the Commissioner therefore reversed the concurrent decision of the district land officers, not for fraud nor for gross irregularity, but solely and alone upon what he held to be a question of fact under his theory of the law applicable; but this, under the rules and the authorities, he was powerless to do in the absence of an appeal.

"Neither the general jurisdiction or the supervisory power of the Commissioner, or of the Secre-

tary, is arbitrary or unlimited. The effective exercise of each is conditioned by established rules of law. **The settled rules and practice and the uniform decisions of the Department constitute both rules of law and of property, and equitable titles in entrymen cannot be destroyed by the Land Department in violation of them.** System, order and the uniform application of the established rules and practice of the Department to all litigants alike are essential to the administration of justice in the Land Department as in the Courts. What a farce the attempt to secure or protect rights in any judicial or *quasi* judicial tribunal must become if its rules and decisions are ignored or applied to each case as it arises at the arbitrary will of the officer who presides. **Equitable titles of claimants to lands under the acts of Congress may not be annulled by the Land Department in violation of its settled practice, or of a rule of law and of property established by a long rule of decisions of its officers nor without legal notice to the parties in interest and an opportunity to be heard."**

*Howe v. Parker*, 190 Fed., 757, 111 C. C. A., 466.

It is the settled jurisprudence that the power of the Commissioner to review the action of the Register and Receiver is not "an unlimited or an arbitrary one."

128 U. S., 456, *Cornelius v. Kessell*.

190 U. S., 309, *Cosmos Exploration Co. v. Gray Eagle Oil Company*.

The power, then, is subjected to some limitation; one being that it shall not be arbitrarily exercised. It follows that the reviewing power must be exercised "within the settled rules of procedure established by the Department in respect to such matters."

*Love v. Flahive*, 205 U. S., 199.

*Germain Iron Co. v. James*, 89 Fed., 811; 32 C. C. A., 348.

*James v. Germain Iron Co.*, 107 Fed., 597; 46 C. C. A., 476.

What then were the rules by which the Commissioner was bound?

Rule 14 of the circular of January 19, 1911, under which the contest was tried, provides: "The above proceedings will be governed by the rules of practice."

39 L. D., 459.

Under the rules of practice a concurrent ruling of the district officers can be reversed only by appeal, except in case of fraud or gross irregularity. (Rule 51.)

39 L. D., 404.

That an appeal by the Government is necessary to reverse a decision in favor of the entrymen clearly appears from Rule 13 of the circular of January 19, 1911: "The special agent will not file any appeal or brief unless directed to do so by this office, or the chief of the Field Division."

In this connection, the record shows that Mr. E. D. Sanford, the chief of the Field Division, was present during the taking of part of the testimony, and took no appeal.

Since arbitrary power is denied to the Commissioner and the entryman has the right to have his cause adjudicated pursuant to settled rules of procedure, it is submitted that the action of the Commissioner was null, as an arbitrary and unwarranted exercise of power.

The present Rule 51 was Rule 48 of the old rules of practice. Rule 48 provided, that in the absence of appeal, the joint decision of Register and Receiver could be reversed only in case of fraud or gross irregularity, or "where the decision is contrary to existing laws or regulations."

In the revision of the rules the last-named exception was dropped, so that even for error of law the decisions of the Register and Receiver cannot now be reversed, except by appeal. The rules now in force, being framed and intended to cover the whole subject of the practice in land matters, repeal and supersede all former rules (*The Habana*, 175 U. S., 685), and cases therein cited.

But the decisions are clearly to the effect that the Commissioner would have had no power to reverse the finding of the local officers made in favor of Stockley even under old Rule 48, which gave him much broader powers than he has under the present Rule 51.

1 L. D., 467, *Brown v. Jefferson*.

5 L. D., 585, *McSherry v. Gildea*.

8 L. D., 30, *Central Pacific Ry. Co.*

11 L. D., 300, *Farris v. Mitchell*.

*13 L. D., 686, Swims v. Ward.*

*14 L. D., 231, Hazard v. Swain.*

*18 L. D., 409, Hobbs v. Goulette.*

*7 L. D., 98, Lindgren v. Boo.*

*15 L. D., 37, Rea v. Stephenson.*

These cases establish the settled jurisprudence of the Department that, **as between the parties to any contest**, the joint decision of the Register and Receiver can be reversed only pursuant to the rule, and wholly deny the power of the Commissioner to modify such decision except under such regulation.

Of course, a decision between individuals is not binding upon the United States, for the Government is not a party to contests between private parties. On this principle it was established at an early date that the Commissioner should, in the matter of controversies **between private parties**, examine the record in all cases, whether appealed or not, to determine the rights **between the successful litigant and the United States**. This duty clearly flowed from the general administrative power over land matters possessed by the Land Department.

*7 L. D., 20, Dovenspech v. Dell.*

*5 L. D., 245, Morrison v. McKissick.*

*6 L. D., 98, Southern Pacific Ry. Co. v. Saunders.*

*6 L. D., 249, Freeman v. Central Pacific Ry.*

*21 L. D., 294, Davis v. Fraser.*

The last cited case concisely states the basis of these decisions to be that in a contest between individuals, the fail-

ure to appeal eliminates the unsuccessful party, leaving the case "to be considered by the office between the successful party and the Government."

But here the United States was a party to the proceedings, in fact was the contestant. The United States was the plaintiff, Stockley, the defendant; and, after contest, answer and issue joined, evidence was adduced by both parties, the case submitted, and judgment rendered. The contest was instituted under rules providing for appeals under the rules of practice, and under those rules, the United States, **as a party**, was bound by the decision of the District Land Office, unless it appealed. The Government had had its day in Court as a litigant, and could avoid the consequence of an adverse decision only by compliance with the rules of practice which apply alike to all litigants and which rules are expressly declared by the circular of January 9, 1911, to govern contests instituted under its provisions.

In the cases cited by the Government, the United States was not a party, hence not bound. Here the United States was the unsuccessful contestant, and the rules in terms provide the only manner in which it could secure a reversal.

Nor is there anything to the contrary in the case of *George W. Dally* (41 L. D., 295). There, proceedings had been instituted under a special agent's report. The Register and the Receiver being disqualified, the Commissioner had designated two special agents to sit in their stead. The

contest resulted in the sustaining of the Government's charge, the entryman appealed, assigning as error the want of jurisdiction in the Land Department to render any judgment, for the reason that there was no judgment of the local officers, claiming the designation of the special agents to sit in the case to be beyond the power of the Department. The Secretary held that these officers were properly appointed under the act of January 11, 1894, and that, therefore, a decision by the Register and Receiver was not essential to his jurisdiction, since the special agents properly acted in place of the local officers. It was further held that under the statutes, the Commissioner had the power to make rules under which a decision of the Register and Receiver could be dispensed with, the evidence merely being taken and sent up for decision. **But it was never held that where the local officers did hear the case, under the rules of practice, their decision could be modified, except under those rules.**

It is, therefore, respectfully submitted that all proceedings rendered in the Land Department subsequent to the decision of the Register and Receiver sustaining Stockley's entry, are absolutely null.

### III.

**The decisions of the Secretary of the Interior and of the Commissioner of the General Land Office are null, as being based entirely upon errors of law.**

It is elementary that the conclusive effect of a decision of a departmental tribunal is only as to the **facts** found.

Such decisions may be examined for errors of law, and such errors render them wholly void.

The question, therefore, is whether the decision purporting to cancel Stockley's entry was or was not erroneous as a matter of law.

This involves two propositions:

(a)

**What constitutes mineral lands within the meaning of the public land laws?**

Section 2302 of the Revised Statutes provides:

"No distinction shall be made in the construction of execution of this chapter, on account of race or color; nor shall any mineral lands be liable to entry and settlement under its provisions."

The provisions referred to are those relating to the acquisition of land under the homestead acts.

The meaning of this act, however, is no longer open to interpretation since it has been long since settled that the term "**mineral lands**" means land "**actually known at the time of final proof to be valuable for minerals.**"

In *Deffeback v. Hawke*, 115 U. S., 392, Mr. Justice Field, delivering the unanimous opinion of the Court, said:

"It is plain that no title from the United States to land known at the time of sale to be valuable for

its minerals can be obtained under the pre-emption or homestead laws or in any other way than as prescribed by the laws specially authorizing the sale of such lands. \* \* \* We say 'land **known** at the time to be **valuable** for its minerals' as there are vast tracts of public land in which minerals of different kinds are found, but not in such quantity as to justify expenditures in the effort to extract them. It is not to such lands that the term 'mineral' in the sense of the statute is applicable. \* \* \* We also say lands **known** at the time of their sale to be thus valuable in order to avoid any possible conclusion against the validity of titles which may be issued for other kinds of land, in which years afterwards rich deposits of minerals may be discovered."

Again, in *Davis v. Weibbold*, 139 U. S., 507, the matter received the most thorough consideration in an opinion in which after reviewing the authorities, it was settled that such exceptions apply only "to known mineral lands." Also see the various cases cited in that case.

In the cases of *Jas. L. Jacobs, et al.*, 7 L. D., 570; *Rea v. Stephenson*, 15 L. D., 37; *Arthur v. Earle*, 21 L. D., 92, the Interior Department held that **the condition of the land as respects its known mineral character at the time of final proof was determinative of the rights of the homesteader to his patent.**

But neither the Commissioner nor the Secretary hold that Stockley's land was known to contain oil or gas on or prior to final proof; both rely for proof of its mineral character on facts subsequently developed and on circumstances

connected with discoveries on other lands which the Commissioner says "were sufficient to put Stockley on notice of the character of his own land."

But in *Colorado Coal & Iron Company v. United States*, 123 U. S., 307, the Court held that a pre-emption entry could not be invalidated by proof of "indications of coal beds or coal fields or greater or less extent or value as shown by outcroppings." "We hold," say the Court \* \* \* "there should be **upon the land** ascertained coal deposits of such extent and value as to make the land more valuable to be worked as a coal mine, under the conditions existing at the time, than for merely agricultural purposes. The circumstances that there are surface indications of the existence of veins of coal does not constitute a mine. It does not even prove that the land will even be under any conditions sufficiently valuable on account of its coal deposits to be worked as a mine. \* \* \* If upon the premises at that time there were not actual known mines capable of being profitably worked for their product, so as to make the land more valuable for mining than for agriculture, a title to them acquired under the Pre-emption Act cannot be successfully assailed."

To the same effect see *United States v. Iron Silver Mining Company, et al.*, 128 U. S., 673 (32 L. Ed., 575), where, in considering the exception of lodes from placer-mining location, the Court said:

"It is not enough that there may have been some indications by outcroppings on the surface, of the existence of lodes or veins of rock in place, bearing

gold or silver or other metal, to justify their designation as 'known' veins or lodes. To meet the designation, the lodes or veins must be clearly ascertained, and be of such extent as to render the land more valuable on that account \* \* \* The subsequent discovery of lodes upon the ground, and their successful working, does not affect the good faith of the application. **That must be determined by what was known to exist at the time."**

Such are also the uniform rulings of the heads of the Interior Department. In *Davis v. Weibbold*, the Court cited with approval the decision of Secretary Teller in *Dughi v. Hawkins*, 2 L. D., 721, and the decisions of Secretary Lamar (following this case) in *Cleghorn v. Bird*, 4 L. D., 478, and *County Commissioners v. Alexander*, 5 L. D., 126.

In *Dughi v. Hawkins*, there was a contest between mineral and agricultural claimants, the latter relying on a homestead entry. Thus the question was identical with that here under consideration. The Secretary held:

"The burden of proof is therefore upon the mineral claimant, and he must show, not that neighboring or adjoining lands are mineral in character, or that that in dispute may hereafter by possibility develop minerals in such quantity as will establish its mineral rather than its agricultural character, but that, **as a present fact**, it is mineral in character and this must appear from actual production of minerals \* \* \* **in other words, it is fact and not theory which must control your office in deciding upon the character of this class of lands."**

In *County Commissioners v. Alexander, supra*, Secretary Lamar said:

"It has been repeatedly held by this Department that the proof of the mineral character of land must be specific and based upon the actual production of mineral; that it is not enough to show that neighboring or adjoining lands are mineral in character \* \* \* but it must be shown as a present fact that the lands are mineral and this must appear from the actual production of mineral and not from a theory that the land may hereafter produce it."

Finally, the question of what constitutes land chiefly valuable for oil or gas was put beyond all controversy in *Chrisman v. Miller, 197, U. S., 321*.

It was there held in a controversy between rival claimants to a placer mining location (where the rule is declared by the Court to be more liberal than where "land is sought to be taken out of the category of agricultural lands" to defeat a homestead entry) that nothing short of actual discovery of oil on the premises would establish its mineral character.

The case of *Diamond Coal & Coke Company v. United States, 233 U. S., 236*, must be construed in the light of the facts disclosed in the opinion. That case was a suit by the Government to cancel a patent issued under the homestead laws, on the ground of fraud and perjury, the Government charging that the defendants knowing the land in question to be coal land and, pursuant to a deliberate plan to defraud, conspired to acquire coal land under the homestead laws.

The testimony showed that the coal stratum outcropped on the adjacent tract and that there were established coal mines in strata on adjacent lands paralleling such outcrop.

"These conditions were open to common observation, and were such as would appeal to practical men, and be relied upon by them in making investments for coal mining. \* \* \*

"There is no fixed rule that lands become valuable for coal only through its actual discovery within their boundaries. On the contrary, they may, and often do, become so through adjacent disclosures and other surrounding or external conditions.

"It will be perceived that we are not here concerned with a mere outcropping of coal with nothing pointing persuasively to its quality, extent or value; **neither are we considering other minerals whose mode of deposition and situation in the earth are so irregular or otherwise unlike coal as to require that they be dealt with along other lines.**"

It will, therefore, be seen that this case stands by itself and that its rule can apply only to coal lands for the reasons stated in the opinion because the outcropping of a workable seam of coal on an adjacent tract of land, with evidence that the vein so dipped as to go under the land homesteaded, was proof of the existence of coal under the land entered pursuant to a conspiracy to obtain coal lands under homestead entries. Such reasons are wholly wanting in the case at bar.

That in cases where homestead entries are involved, the question as to whether the land was in the legal sense known mineral lands at the date of final proof is determinative, is settled jurisprudence.

In *Wyoming v. United States*, 255 U. S., 489, the Court said:

"As respects cash entries under the pre-emption, homestead, desert land, and kindred laws, the Land Department always has ruled that if, when the claimant has done all that he is required to do to entitle him to receive the title, the land is not known to be mineral, he acquires a vested right which no subsequent discovery of mineral will divest or disturb."

Again, quoting from a departmental decision:

"In the disposition of the public lands of the United States, under the laws relating thereto, it is settled law:

"1. That when a party has complied with all the terms and conditions necessary to the securing of title to a particular tract of land, he acquires a vested interest therein, is regarded as the equitable owner thereof, and thereafter the Government holds the legal title in trust for him;

"2. That the right to a patent, once vested, is, for most purposes, equivalent to a patent issued, and when in fact issued, the patent relates back to the time when the right to it became fixed; and

"3. That the conditions with respect to the state or character of the land, as they exist at the time when all the necessary requirements have been com-

plied with by a person seeking title, determine the question whether the land is subject to sale or other disposal, and no change in such conditions, subsequently occurring, can impair or in any manner affect his rights."

And, further, quoting from *Leonard v. Lennox*, 104 C. C. A., 296, 181 Fed., 760:

**"The character of the land, whether agricultural or known to be chiefly valuable for coal, must be determined according to the conditions existing at the time when the applicant does all that he is required to do to entitle him to a patent \* \* \*. Whilst it (the entry) undoubtedly is subject to examination and consideration by them (the officers of the Land Department) this is not that they may elect whether or not they will consent to its allowance, but that they may ascertain whether or not the applicant has acquired a right to its allowance, a right which is acquired, if acquired at all, at that point of time when the applicant has done all that he is required to do in the premises, instead of at the time of its recognition by them."**

In *Payne v. New Mexico*, 255 U. S., 438, it was again said by this Court:

**"In the brief for the officers it is frankly and rightly conceded to be well settled that 'a claimant to public land who has done all that is required under the law to perfect his claim acquires rights against the Government, and that his right to a legal title is to be determined as of that time.'"**

It, therefore, being settled law that the status of the entryman's rights under the homestead law is to be determined as of the date of final proof and equally settled law establishing that by the term "mineral lands" is meant in the public land law "lands actually producing mineral," the Department was wholly without right to cancel Stockley's entry because of facts subsequently developing or because of a finding that developments in the township "were sufficient to put him on notice of the character of his own land."

Such decision—even if the jurisdiction of the Department had not been lost under the act of March 3, 1891—was wholly erroneous in law and, therefore, void. For, if the Department had had jurisdiction it was limited to the ascertainment of the fact, whether at the date of final proof the land was "known" to be valuable for oil or gas.

(b)

**Was the decision purporting to cancel Stockley's entry rendered without any evidence to sustain its finding of fact?**

Whether or not there be any evidence to sustain the charge or finding is, in every judicial or quasi-judicial tribunal, a question of law. And a finding and judgment rendered without any evidence to support it is an arbitrary act.

It is undoubted that where it is contended that an order whose enforcement is resisted was rendered without any

evidence upon which it might rest, the question involves not an issue of fact, but one of law.

*234 U. S., 185 Railroad Co. v. U. S.*

In *Interstate Commerce Com. v. L. & N. Ry. Co.*, 227 U. S., 81, the Court says:

"A finding without evidence is arbitrary, and baseless. And if the Government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our Government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority \* \* \* is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that **administrative orders**, quasi-judicial in character, **are void** if a hearing was denied; if that granted was inadequate or manifestly unfair; if the **finding was contrary to the 'indisputable character of the evidence'**; \* \* \* or if the facts do not, as a matter of law, support the order made."

In addition to the numerous authorities cited, see:

*Bailey v. Sanders*, 228 U. S., 605.

*Howe v. Parker*, 190 Fed., 746 (111 C. C. A., 466).

both of which apply this doctrine to decisions of the Department of the Interior.

Hence, if the Department had had jurisdiction and if it were sufficient to justify the Department in cancelling a homestead entry that "developments in the vicinity" "were sufficient to put the entryman on notice of the (mineral) character of his own land" the question whether the record presented any evidence to sustain the finding of fact is a legal one, examinable by the Courts.

It becomes necessary, therefore, to state all the evidence.

This consists entirely of the testimony of the Government witnesses, Pyron, Webster, Thomas and Guy; of the entryman and his witnesses, Bell and Vaughan, and of Bulletin No. 429 of the Geological Survey of 1910, offered in evidence by the Government.

As regards the question at issue, the following is an accurate and complete summary of the evidence. (Record, pages 65, *et sequitur*):

**Pyron** (represents the Gulf Refining Company of Louisiana, one of the largest operators in the Caddo field):

"His company had no information that would have led it to believe on January 5, 1909, that the Stockley land contained oil or gas, and his company was in position to know as much about this land as was any of the operators in the field. At the date mentioned no operators were taking leases within a radius of two miles of the Stockley homestead (p. 68).

"On January 5, 1908, 'there were a very few little wells just west of Oil City (in Section 12, Township 20 N., Range 16 W., a dry hole, drilled by the Atlanta Oil & Gas Company.' The geological formation in the territory just west of Oil City is entirely different from that in the Stockley tract; the oil sands are different in character, and entirely different grades of oil are found in the two territories at approximately the same depth (p. 70). In the Oil City district the oil is black and heavy, while around the Stockley land it is a brown oil of light gravity. The oil-bearing stratum of the Oil City region does not extend across Jeems Bayou on to the Stockley tract. There existed no reason for a practical oil man to believe, on January 5, 1909, that the oil-bearing stratum of the Oil City district continued across Jeems Bayou and under the Stockley tract (p. 71).

**"On January 5, 1909, the nearest oil well or gas well was about three miles east of the Stockley homestead.** Does not know that there are any surface indications of oil or gas on the land in question. It is hill land, with a sandy soil and with some oak and some pine timber (p. 72).

(Cross-examined).

"The first development of any consequence west of Jeems Bayou was the drilling of the Trees Company's well No. 4, in Section 27, Township 21 North, Range 16 West, about **November 10, 1909.** Just prior to the completion of this well the Trees Company had offered to sell to witness' company their entire holdings, consisting of four to five thousand acres of leases several miles north of the Stockley

land, for less than the expenditure the Trees Company had incurred in drilling on the land. **Witness' company refused this offer because it did not consider the entire property worth what had been actually invested therein in drilling.** (p. 73.) These Trees Company leases embraced practically all of Township 21 N., Range 16 West, lying west of Jeems Bayou. This subsequently proved to be very productive territory and was afterwards sold to the Standard Oil Company at a very large price. (p. 73.) On January 5, 1909, there were no indications of oil or gas such as to put an ordinarily prudent person on notice that the Stockley land was valuable for oil or gas (p. 75)."

**Webster** (has been a lease-man in the Caddo field for the Gulf Refining Company of Louisiana for five years and during that time has been intimately acquainted with the oil and gas developments in this field (p. 76) :

"On January 5, 1909, there had been no development such as to indicate that oil or gas might be discovered on the Stockley tract. There were some producing wells and some dry holes west of Oil City. **The nearest well was about three miles east of Stockley.** At that date there had been no discovery of oil or gas within two miles of Stockley's homestead. The first well west of the bayou was the Trees well, considerably to the north and east of this land. **Witness' company leased no land west of Jeems Bayou or within two miles of the Stockley tract until after the Trees well came in.** The first lease in that territory was the Burr lease in Texas, which was executed after the Trees well came in.

(Mr. Pyron had fixed the date of Burr lease as in November, 1909. (p. 67.)

"There was nothing to indicate on January 5, 1909, that the Stockley tract was underlain with oil or gas. The only real test of the oil and gas character of land is to drill.

(Cross-examined).

"The Rives land, being the north half of the north-east quarter of Section 5, Township 20 North, Range 16 West, which adjoins the Stockley land on the north, was offered witness' company in the early part of 1909 for one dollar per acre, and refused for the reason that company had no faith in it; did not think there was any oil in that territory. (p. 79.)"

**Thomas** (in charge of the land department of the Producers' Oil Company at Shreveport) (p. 96):

"The first wells drilled west of Jeems Bayou were in March, 1910. (p. 97.) There was no drilling in the vicinity of the Stockley land on January 5, 1909. (p. 97.)"

**Guy** (engaged in the oil business in Shreveport, and has been thoroughly familiar with developments in the Caddo field since its inception):

"Considered in 1910 that Stockley's land had mineral possibilities but refused to take a lease on it then because he couldn't handle it. 'I would not drill it. I did not want it.' There were no developments anywhere near the land in 1909. (p. 99.)

6

1

“The drilling at that time was several miles to the north, on the Trees property. Does not think that oil or gas had been discovered west of the bayou prior to January 5, 1909. The nearest producing wells at that date were near Oil City and three or four miles from this land. These developments did not, at that time, indicate to a practical oil man that the oil-bearing stratum underlaid the Stockley tract. As a matter of fact, a great deal of land between, which has since proven productive, was at that time ‘condemned territory.’ (p. 99.)”

The above was the entire showing made by the Government, and the testimony so adduced not only fails to establish the charges made, but conclusively establishes the fact that there existed no reason on January 5, 1909, for suspecting the property in dispute to be oil or gas land.

The testimony on the part of the defendant, consisting of the evidence of W. W. Bell, Thomas J. Stockley and George M. Vaughan, all disprove the mineral character of the land and confirm the good faith of Stockley in carrying out and perfecting his entry. For instance, Stockley testifies on cross-examination (p. 94):

Q. Mr. Stockley, had anyone approached you for the purpose of leasing your land, before you made final proof?

A. No, sir, they had not.

Q. Did any oil man ever tell you that your land possibly contained oil or gas?

A. No, sir, never did.

Q. Before you made final proof?

A. No, sir, nothing about it at all. I went on it as I said a while ago for a home, that is what I went on it for. I did not know anything about oil wells, no oil wells on that side of the lake then, even when I made my final proof.

Q. Had any oil or gas been discovered west of Jeems Bayou or Ferry Lake before you made final proof?

A. No, sir, not that I know of at all; the nearest was at Oil City that I knew anything of.

Comment on the testimony cannot make stronger our complaint that the Commissioner's holding to the contrary was wholly arbitrary.

And there is nothing in Bulletin No. 429, to which the Commissioner refers, that does not wholly accord with the testimony of the witnesses.

We call attention first to the map of the Caddo oil field, made in the early part of 1909, and printed in the bulletin (p. 126). This map shows the extreme western edge of the field to be the western line of Sections 1 and 2, Township 20 North, Range 16 West. **This is three and one-half miles east of Stockley's land.**

On page 130 appears the statement that "small quantities of heavy oil are found in the Nacotoch sand, west of Jeems Bayou, in Sections 27 and 22. Three wells furnish about 85 barrels daily." That is, the only discovery west of the bayou consisted of three wells with a total produc-

tion of 85 barrels of **heavy** oil (the territory including the Stockley land produces only **light** oil) in the **shallow** sand (all the production on the Stockley land and adjacent lands is in the **deep** sands), and these wells were in Sections 22 and 27, Township 21 North, Range 16 West, whereas the Stockley land is in Sections 5 and 8, Township 20 North, Range 16 West, over three miles to the southwest. It was precisely because the Trees Oil Company had succeeded in the early part of 1909 in securing **heavy** oil only in considerable quantities, that it was unable to dispose of its large holdings at the actual cost of development.

The above is the full extent of the relevant statements in the bulletin referred to, and written before the date of Stockley's final proof.

But on pages 132-135 Dr. David T. Day adds a supplement to the preceding report, covering developments west of Jeems Bayou since its submission. In this supplement it is stated that "recent developments on the west side of the Caddo field have entirely changed the economic conditions." That this change began with the completion of the Trees Company's No. 4 on November 12, 1909, (just as was testified to by the witnesses). Work at deepening this well, which was "an experimental effort to test the deep sands," began only during July, 1909. It was after the bringing in of this well in November, 1909, that the Gulf Refining Company began drilling its Burr well, completed in March, 1910, referred to by the witnesses as being the first productive well in the vicinity of the Stockley land. A

list of the producing wells brought in since the previous report is found on pages 134 and 135, giving the date of each completion, and a complete list of oil and gas wells is given on pages 139-149, inclusive; from which list it will be seen that the nearest gas wells on January 5, 1909, were in Sections 1, 11, 12 and 13, Township 20 North, Range 16 West, **from three to four miles to the east and across the lake.**

But, after reading the bulletin, the Commissioner falls into the error of viewing the case from the knowledge obtained from subsequent developments instead of from the facts **known to exist at final proof.** He says: "The early wells on both the Stiles and the Burr properties are described in Bulletin 429 at page 132." And then, overlooking the fact that this reference shows the completion of the first important well on the Stiles tract to have been **on November 12, 1909, and the beginning of the work on the Burr tract thereafter,** the Commissioner concludes that final proof was not made "until the oil companies were becoming active in their developments in his vicinity." But these developments did not begin until late in 1909 (work of deepening the Stiles well was in July), while Stockley's final proof was made on the 5th day of January.

The same observations apply with equal force to the reference to gas discoveries. Bulletin 429 shows that no gas had been discovered within three miles of the land upon the date which determined Stockley's rights. The Gilbert

well, referred to in the decision, was more than four miles, and the Producers' Nos. 2 and 3 wells (see p. 136), over three miles to the east.

In view of the entire absence of any evidence to sustain a finding that "developments" were sufficient to put him (Stockley) on notice of the mineral character of his land on the date of his final proof, and of the concurrent testimony of the witnesses for the Government and for the entryman that there were no evidences of such character at that date, and, in view of the complete corroboration of that testimony by the bulletin of the Geological Survey, we submit that the Secretary's, as well as the Commissioner's decision, is as much without foundation in fact as they are both without support in law.

#### IN CONCLUSION.

It is respectfully submitted that, for all the reasons hereinabove discussed, the judgment appealed from is erroneous, and should be reversed, and the Government's bill dismissed.

Respectfully submitted,

R. L. BATTS,  
D. EDWARD GREER,  
S. L. HEROLD,  
Solicitors for Appellants.